

ANUSKA TUGATUK  
(ON RECONSIDERATION)

IBLA 76-73

Decided

November 5, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting Alaska Native allotment application AA 7323.

Petition for reconsideration granted: Anuska Tugatuk, 23 IBLA 182 (1976), and decision appealed from vacated; case remanded.

1. Alaska: Native Allotments

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve -- Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

APPEARANCES: Lucy M. Lowden, Esq., Dillingham, Alaska, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

Anuska Tugatuk has petitioned the Board for reconsideration of our decision, Anuska Tugatuk, 23 IBLA 182 (1976), in which we affirmed the rejection of her Native allotment application, AA 7323, because she did not present adequate evidence of substantially continuous use and occupancy of the land for a period of 5 years. Appellant had not been given an opportunity for hearing. In Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), the Court held that Native allotment applicants were entitled to notice and an opportunity for hearing where there was an issue of fact with respect to an applicant's qualifications. Appellant filed a petition for reconsideration in light of this decision.

[1] First, however, we must consider the following provision of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435, enacted on December 2, 1980:

Sec. 905. (a)(1) Subject to valid existing rights, all Alaska Native allotment applications made pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended) which were pending before the Department of the Interior on or before December 18, 1971, and which describe either land that was unreserved on December 13, 1968, or land within the National Petroleum Reserve -- Alaska (then identified as Naval Petroleum Reserve No. 4) are hereby approved on the one hundred and eightieth day following the effective date of this Act, except where provided otherwise by paragraph (3), (4), (5), or (6) of this subsection, or where the land description of the allotment must be adjusted pursuant to subsection (b) of this section, in which cases approval pursuant to the terms of this subsection shall be effective at the time the adjustment becomes final. The Secretary shall cause allotments approved pursuant to this section to be surveyed and shall issue trust certificates therefor.

Those other paragraphs describe circumstances under which the application would remain subject to adjudication under the Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed, 43 U.S.C. § 1617 (1976). In this case, it appears that the only circumstance that would bar automatic approval would be the filing of a protest under subsection 905(a)(5), before the end of the 180-day period. 1/

The record shows no reason why appellant's allotment application should not be approved under this statutory provision. There appear to be no valid existing rights in conflict with the application, and the

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1/ In addition to the filing of a protest, such circumstances include a determination that the land is valuable for certain minerals, or a determination that the application describes land in a previously established unit of the national park system or in a state selection but where the allotment is not within the core township of a native village.

land was not reserved on December 13, 1968. We have no basis for concluding that appellant's application was not pending before the Department on December 18, 1971. <sup>2/</sup> Where a Native allotment applicant meets the requirements of subsection 905(a)(1), failure to provide adequate evidence of use and occupancy does not bar approval of the allotment application. The State Office, therefore, should, hold appellant's application for approval, subject to any action which may have arisen before the end of the 180-day period which would preclude approval under subsection 905(a)(1) and require adjudication pursuant to the provisions of the Native Allotment Act.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, our decision in Anuska Tugatuk, supra, and the decision appealed from are vacated, and the case remanded for further action consistent with this opinion.

Edward W. Stuebing  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Douglas E. Henriques  
Administrative Judge

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<sup>2/</sup> The requirement that an application be pending before the Department on Dec. 18, 1971, must be met regardless of whether the application is approved under section 905(a)(1) of the Alaska National Interest Lands Conservation Act or the Alaska Native Allotment Act, because the Native Allotment Act was repealed on that date and no application could be approved thereunder unless it was pending before the Department of the Interior on Dec. 18, 1971. 43 U.S.C. § 1617(a) (1976). Although Tugatuk's application was dated June 27, 1971, it was not filed with the Bureau of Land Management until Mar. 23, 1972, when the Bureau of Indian Affairs (BIA) filed it on Tugatuk's behalf. It appears that many Native allotment applicants had filed their applications or evidence with the BIA prior to Dec. 18, 1971, but BIA held them past the time when they were required to be filed with the Bureau of Land Management. Such applications are deemed to be pending on Dec. 18, 1971. See, e.g., Julius F. Pleasant, 5 IBLA 171 (1972). On remand Tugatuk should be required to establish that her application was filed with BIA prior to Dec. 18, 1971.

